

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Candace Taylor	Team: Squad #6	CCRB Case #: 201505249	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/16/2015 8:20 PM	Location of Incident: MTA Subway station at West 34th Street and Broadway	Precinct: 14	18 Mo. SOL 12/16/2016	EO SOL 12/16/2016	
Date/Time CV Reported Wed, 06/17/2015 10:35 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/25/2015 3:22 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Farid Aliyev	00140	934381	TB DT02
2. POM Philip Tsang	27152	907474	TB DT02

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brandon Tom	06729	937639	TB DT02

Officer(s)	Allegation	Investigator Recommendation
A.SGT Farid Aliyev	Abuse: Sgt. Farid Aliyev questioned § 87(2)(b)	
B.SGT Farid Aliyev	Abuse: Sgt. Farid Aliyev stopped § 87(2)(b)	
C.SGT Farid Aliyev	Abuse: Sgt. Farid Aliyev threatened to arrest § 87(2)(b)	
D.POM Philip Tsang	Abuse: PO Philip Tsang searched § 87(2)(b) inside of the turnstile.	
E.POM Philip Tsang	Abuse: PO Philip Tsang refused to provide his shield number to § 87(2)(b)	
F.POM Philip Tsang	Abuse: PO Philip Tsang frisked § 87(2)(b) outside of the turnstile.	
G.POM Philip Tsang	Abuse: PO Philip Tsang searched § 87(2)(b) outside of the turnstile.	
H.SGT Farid Aliyev	Discourtesy: Sgt. Farid Aliyev spoke discourteously to § 87(2)(b)	
I.POM Philip Tsang	Abuse: PO Philip Tsang issued a summons to § 87(2)(b)	

Case Summary

On June 17, 2015, § 87(2)(b) filed this complaint over the phone with IAB on behalf of her son, § 87(2)(b). It was referred to the CCRB, and was received on June 25, 2015, under log number 15-17145. § 87(2)(b) did not witness the incident.

On June 16, 2015, at approximately 8:20 p.m., inside the MTA Subway station at West 34th Street and Broadway in Manhattan, § 87(2)(b) used his metro card at the turnstile and then entered through the emergency gate with a delivery package. When § 87(2)(b) was approximately 20 feet away from the emergency gate, Sgt. Farid Aliyev from Transit District 2 in Manhattan called out to him to come over. § 87(2)(b) refused to go with Sgt. Aliyev. As § 87(2)(b) walked away, Sgt. Aliyev questioned how he got in and § 87(2)(b) said that he went through the turnstile (**Allegation A**). Sgt. Aliyev stopped § 87(2)(b) asked if he used a metro card to enter and then told § 87(2)(b) to hand over the metro card to verify its usage (**Allegation B**). § 87(2)(b) admitted that he used his metro card but refused to hand it over. Sgt. Aliyev told § 87(2)(b) that he could be arrested for disorderly conduct (**Allegation C**).

PO Brandon Tom and PO Phillip Tsang, also from Transit District 2, approached § 87(2)(b) at which time PO Tsang searched § 87(2)(b) front pants pockets (**Allegation D**). § 87(2)(b) asked PO Tsang to see his shield, and PO Tsang allegedly said that § 87(2)(b) did not need to see it (**Allegation E**). § 87(2)(b) was handcuffed and escorted outside of the turnstile. PO Tsang frisked § 87(2)(b) front pants pockets (**Allegation F**) and then removed his metro card and identification (**Allegation G**). PO Tom verified that § 87(2)(b) used his metro card, at which time Sgt. Aliyev allegedly commented that the incident would not have happened if § 87(2)(b) would have “fucking” handed over his metro card earlier (**Allegation H**). PO Tsang issued § 87(2)(b) a summons for disorderly conduct, (**Allegation I**).

Mediation, Civil and Criminal Histories

Both mediation and investigation were presented to § 87(2)(b) on July 2, 2015. § 87(2)(b) stated that the injury to his right hand was the main reason for his complaint. Due to § 87(2)(b) injury, mediation was unsuitable (03 Board Review). § 87(2)(b)

As of July 22, 2015, neither § 87(2)(b) nor § 87(2)(b) filed a Notice of Claim with the City of New York regarding this incident (04 Board Review). On August 8, 2015, § 87(2)(b) called the CCRB and stated that the summons was dismissed because it was issued under the wrong subsection. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (05 Board Review).
- Sgt. Aliyev has been a member of the NYPD for 11 years and has had one previous CCRB allegation which was substantiated (see Officer History).
 - In CCRB case 201307368, an allegation of offensive language was substantiated. The board recommended command discipline and the NYPD penalty was command discipline B.

- PO Tsang has been a member of the NYPD for 21 years and has no prior substantiated CCRB allegations (see Officer History).

Attempts to obtain video footage

On July 14, 2015, an email was sent to the MTA to preserve video footage at the incident location. On July 22, 2015, a second email was sent and a call was made to the MTA as a follow up on the aforementioned request. The assigned investigator was informed that the point of contact at the MTA was currently on vacation and would address the request upon return. On July 30, 2015, the MTA contacted the CCRB via email and stated that video footage was unavailable. As a result, the investigation was unable to secure video footage from the Metropolitan Transportation Authority.

Findings and Recommendations

Allegations not pleaded

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation A- Abuse of Authority: Sgt. Farid Aliyev questioned § 87(2)(b) [REDACTED]

Allegation B- Abuse of Authority: Sgt. Farid Aliyev stopped § 87(2)(b) [REDACTED]

It is undisputed that Sgt. Aliyev approached § 87(2)(b) [REDACTED] after he entered through the emergency gate. Sgt. Aliyev asked § 87(2)(b) [REDACTED] if he used a metro card which § 87(2)(b) [REDACTED] acknowledged that he did. Sgt. Aliyev asked § 87(2)(b) [REDACTED] to produce his metro card to verify that he swiped it at the turnstile. § 87(2)(b) [REDACTED] refused to hand over his metro card and was placed in handcuffs by PO Tsang. § 87(2)(b) [REDACTED] was escorted outside of the turnstile by the officers.

§ 87(2)(b) [REDACTED] stated that when he entered the subway station, he carried with him a 30 pound package that was in a cart. He walked to the special entry turnstile which was next to the emergency gate. § 87(2)(b) [REDACTED] waited as other commuters swiped their metro cards and entered through the emergency gate with their luggage. § 87(2)(b) [REDACTED] positioned his cart in front of the emergency gate, swiped his metro card and walked through the turnstile. He then went to the emergency gate, opened it and pulled his cart through the gate. § 87(2)(b) [REDACTED] was approximately 20 feet away from the emergency gate when Sgt. Aliyev tried to get his attention by calling out to him. § 87(2)(b) [REDACTED] refused to stop. Sgt. Aliyev shouted, “Hey,” and when § 87(2)(b) [REDACTED] looked back,

he saw Sgt. Aliyev pull a gold shield out from under his shirt, at which time § 87(2)(b) stopped walking. Sgt. Aliyev asked § 87(2)(b) how he got into the subway station. § 87(2)(b) replied that he went through the turnstile. Sgt. Aliyev then said that he saw § 87(2)(b) walk through the emergency gate. § 87(2)(b) explained that he did so after he swiped his card and walked through the turnstile. Sgt. Aliyev asked § 87(2)(b) to produce the metro card. § 87(2)(b) removed his wallet and showed Sgt. Aliyev three metro cards. Sgt. Aliyev asked § 87(2)(b) to hand over the metro card he used at the turnstile. § 87(2)(b) refused but offered to go with Sgt. Aliyev to verify that the metro card was used. § 87(2)(b) then rescinded the offer on account of the package he needed to deliver.

§ 87(2)(b) and Sgt. Aliyev argued about handing over his metro card. PO Tom approached and told § 87(2)(b) to cooperate. § 87(2)(b) said that he had to make a delivery at a specific time. Sgt. Aliyev told § 87(2)(b) to place his hands behind his back and said that § 87(2)(b) was going to be arrested. Sgt. Aliyev placed § 87(2)(b) in handcuffs while PO Tom took § 87(2)(b) to the station. Sgt. Aliyev grabbed § 87(2)(b) right arm, at which time the officers escorted him outside of the turnstile. § 87(2)(b) stated that he did not feel free to leave (01 and 02 Board Review).

Sgt. Aliyev offered a different account as to why he approached § 87(2)(b). Sgt. Aliyev stated that he, PO Tsang and PO Tom approached § 87(2)(b) approximately 15 seconds after they observed him walk through the emergency gate. Sgt. Aliyev's level of suspicion was raised when he saw § 87(2)(b) scan the crowd by looking from left to right which Sgt. Aliyev stated that in his experience, the action was indicative of someone who evaded his fare. Sgt. Aliyev did not observe any other suspicious actions made by § 87(2)(b). Sgt. Aliyev stopped § 87(2)(b) to verify if he used a metro card at the turnstile. § 87(2)(b) confirmed that he used a metro card but became verbally non-compliant when instructed to produce the metro card for verification. Sgt. Aliyev believed the situation had the potential to escalate based on § 87(2)(b) behavior and failure to comply which made Sgt. Aliyev fear for his safety as well as the other officers. Sgt. Aliyev instructed PO Tsang to place § 87(2)(b) in handcuffs for the officers' safety (06, 09 and 10 Board Review).

Both PO Tsang and PO Tom corroborated Sgt. Aliyev in that § 87(2)(b) initial action after he came through the gate was indicative of fare evasion and that their intent when they approached was to verify if § 87(2)(b) had used a metro card. PO Tsang and PO Tom also stated that § 87(2)(b) admitted to using a metro card but refused to produce it for verification. § 87(2)(b) also refused to provide identification. § 87(2)(b) was verbally non-compliant and started to walk away, at which time PO Tom told § 87(2)(b) that he could not leave. PO Tsang placed § 87(2)(b) in handcuffs for the officers' safety because of his demeanor towards them (12 and 14 Board Review).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C- Abuse of Authority: Sgt. Farid Aliyev threatened to arrest § 87(2)(b)

§ 87(2)(b) and Sgt. Aliyev argued about handing over the metro card in order to verify if it was used. Sgt. Aliyev eventually said that § 87(2)(b) could be arrested for disorderly conduct (01 and 02 Board Review).

Sgt. Aliyev denied that he told § 87(2)(b) that he could be arrested. He further stated that § 87(2)(b) was never considered under arrest. Instead, Sgt. Aliyev stated that § 87(2)(b) was detained for the officers' safety and to verify if § 87(2)(b) used a metro card before he entered through the emergency gate. Sgt. Aliyev's memo book noted that § 87(2)(b) was irate, flailed his arms and yelled at the officers (09 and 10 Board Review).

PO Tom stated that he did not know if Sgt. Aliyev told § 87(2)(b) that he could be arrested for disorderly conduct (14 Board Review).

§ 87(2)(g)

§ 87(2)(g)

Allegation D- Abuse of Authority: PO Philip Tsang searched § 87(2)(b) inside of the turnstile.

It is undisputed that PO Tsang searched § 87(2)(b) § 87(2)(g)

§ 87(2)(b) stated that after PO Tom told him to cooperate with Sgt. Aliyev, PO Tsang immediately searched § 87(2)(b) front pants pockets. § 87(2)(b) back was turned to PO Tsang and he did not see when PO Tsang initially approached. § 87(2)(b) stepped away and turned to face PO Tsang. § 87(2)(b) asked the officers what they were looking for because PO Tsang resumed searching his pants pockets. PO Tsang removed § 87(2)(b) cell phone, wallet and keys which were distributed in his front pants pockets. PO Tsang placed the items back in § 87(2)(b) pants pockets shortly after (01 and 02 Board Review).

PO Tsang denied going into § 87(2)(b) pockets prior to his being placed in handcuffs (07, 11 and 12 Board Review). Both Sgt. Aliyev and PO Tom corroborated PO Tsang's statement that § 87(2)(b) was not searched inside the turnstile (10 and 14 Board Review).

§ 87(2)(g)

Allegation E- Abuse of Authority: PO Philip Tsang refused to provide his shield number to

§ 87(2)(b)

§ 87(2)(b) stated that as PO Tsang searched him inside of the turnstile area, he asked PO Tsang, who he was and Sgt. Aliyev said that PO Tsang was also an officer. PO Tsang was dressed in plainclothes and § 87(2)(b) asked PO Tsang to see his shield. PO Tsang allegedly said that § 87(2)(b) did not need to see it (01 and 02 Board Review).

PO Tsang confirmed that § 87(2)(b) asked to see his shield and stated that he complied with § 87(2)(b) request by showing his shield (12 Board Review). While PO Tom did not hear § 87(2)(b) request, both he and Sgt. Aliyev denied hearing PO Tsang refuse the request (10 and 14 Board Review).

§ 87(2)(g)

Allegation F- Abuse of Authority: PO Philip Tsang frisked § 87(2)(b) outside of the turnstile.

Allegation G- Abuse of Authority: PO Philip Tsang searched § 87(2)(b) outside of the turnstile.

It is undisputed after § 87(2)(b) was escorted outside of the turnstile, he was frisked and searched by PO Tsang. § 87(2)(b) metro card and identification were removed from his pants pocket and his metro card was verified for usage.

§ 87(2)(b) stated that after he was placed in handcuffs and escorted outside of the turnstile, he was detained next to an MTA kiosk. PO Tsang frisked § 87(2)(b) before searching his pants pocket. PO Tsang then removed § 87(2)(b) metro card and identification from his pants pocket (01 and 02 Board Review).

PO Tsang acknowledged placing § 87(2)(b) in handcuffs, for the officers' safety, and escorting § 87(2)(b) outside of the turnstile. PO Tsang asked § 87(2)(b) where his metro card was located and proceeded to frisk § 87(2)(b). PO Tsang then searched § 87(2)(b) pockets to get his metro card in order to verify its usage. PO Tsang stated that § 87(2)(b) was not considered under arrest initially. § 87(2)(b) was only considered under arrest when he failed to provide his identification, flail his arms and scream at the officers (07, 11 and 12 Board Review).

Both Sgt. Aliyev and PO Tom corroborated PO Tsang in that § 87(2)(b) was searched after he was taken outside of the turnstile. Sgt. Aliyev stated that § 87(2)(b) was never considered under arrest but detained. PO Tom stated § 87(2)(b) could have been arrested for disorderly conduct if he failed to provide identification upon request (10 and 14 Board Review).

A frisk requires reliable knowledge of facts including furtive movements, suspicious bulge or common law inquiry to provide a reasonable basis for suspecting that the individual to be subjected to that intrusion is armed and may be dangerous. People v Russ 61N.Y.2d 693 (1984) (18 Board Review). An officer can perform a search incident to a lawful arrest, provided that the probable cause to arrest the individual existed before the search. People v. Reid 104 A.D.3d 58 957 N.Y.S.2d 332 N.Y. App. Div. 1st Dept., 2013 (19 Board Review). A search of a person is permissible when a frisk reveals a weapon or when there is probable cause for an arrest. Patrol Guide Procedure 212-11 (17 Board Review).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation H- Discourtesy: Sgt. Farid Aliyev spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that after PO Tom verified that the metro card was used, Sgt. Aliyev commented that the incident would not have happened if § 87(2)(b) had “fucking” handed over the metro card earlier. At the time Sgt. Aliyev made the comment, PO Tsang was conducting a warrant check and § 87(2)(b) did not know if PO Tom was present (01 and 02 Board Review).

Sgt. Aliyev denied using any profanity towards § 87(2)(b) throughout their interaction. PO Tom, who was the only officer in the vicinity to hear the alleged comment corroborated Sgt. Aliyev’s statement that profanity was not used (10 Board Review).

§ 87(2)(g)

[REDACTED]

Allegation I- Abuse of Authority: PO Philip Tsang issued a summons to § 87(2)(b)

It is undisputed that PO Tsang issued a disorderly conduct summons to § 87(2)(b)

§ 87(2)(b) stated he received a summons that was written by PO Tsang. The charge on the summons was for disorderly conduct summons under subsection six, which refers to congregating with others in a public place and refusing to comply with a lawful order to disperse § 87(2)(b) later noted that the summons was dismissed in court (01 and 02 Board Review).

PO Tsang stated that § 87(2)(b) was issued a summons for disorderly conduct in lieu of arrest for disorderly conduct. PO Tsang, PO Tom and Sgt. Aliyev tried to verify § 87(2)(b) identification, which he refused to provide and began to flail his arms and scream at the officers with profanity and was considered under arrest § 87(2)(b) was considered under arrest when he failed to provide his identification and because of his demeanor towards the officers. After PO Tsang verified § 87(2)(b) identification and determined that he had no outstanding warrants, § 87(2)(b) was no longer considered under arrest and was released (12 Board Review).

Sgt. Aliyev stated that § 87(2)(b) was never considered under arrest. § 87(2)(b) was detained when Sgt. Aliyev instructed PO Tsang to place § 87(2)(b) in handcuffs. Sgt. Aliyev believed § 87(2)(b) was cited for “refusal to move and violent behavior.” Both Sgt. Aliyev and PO Tom corroborated PO Tsang in that § 87(2)(b) was issued a summons for disorderly conduct. They also stated that though bystanders and onlookers were present, there was no crowd and pedestrian traffic was not impeded (10 and 14 Board Review).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk. Penal Law 240.20 (16 Board Review).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date